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CHILDREN'S LAW REPORT

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Special Issue: New Laws Concerning Children

About the *Children's Law Report*

This special issue of the *Children's Law Report* has been distributed to various groups in addition to the regular mailing list. The *Children's Law Report* is a monthly newsletter published by the Children's Law Project. The newsletter contains recent case decisions, legislative updates, brief articles on medical and social science findings, summaries of the law on specific issues, and training information. If you would like to be added to the mailing list, please complete and return the form at the end of this newsletter.

The Children's Law Project is a legal resource center for legal, social science, mental health, and medical professionals involved in child abuse and neglect proceedings. The idea for the Children's Law Project originated with the planning process of S.C. Families for Kids, a joint project of the S.C. Department of Social Services and S.C. United Way. Families for Kids is implementing comprehensive reforms of the child protection system. The

Children's Law Project was also recommended by the S.C. Children's Justice Act Task Force. The project is administered by the USC School of Law in partnership with the Institute for Families in Society.

The overall purpose of the Children's Law Project is to improve the quality of legal proceedings concerning child abuse and neglect, by enhancing the knowledge and skills of participants in those proceedings. This is accomplished through a variety of services:

- **Training**
Statewide training programs on issues related to child abuse and neglect are provided, utilizing both local and national experts. Sessions are offered at no cost or for a nominal fee. Particularly emphasized is training which includes multiple disciplines, utilizes a cross-training format, or involves legal issues. Staff of the Children's Law Project is available to conduct in-house training on a wide variety of issues throughout the state for organizations concerned with children's issues. Possible topics include new laws, TPR, reasonable

efforts, placement plans, child witnesses, evidence in civil and/or criminal proceedings, and others.

- **Website**
A computer Website is being developed, which will include case summaries and other legal, social science, medical, and mental health information. The Website address is: <http://childlaw.law.sc.edu>.

- **Library**
Literature on legal, social science, medical and mental health issues is being collected. Professionals and students may utilize these materials in the office.

- **Legal Resource Materials**
Legal materials, including case decisions, briefs, and treatises, are being collected. Case and issue summaries are prepared. Upon request, particular topics can be researched, analyzed and summarized.

- **Technical Assistance**
Technical assistance can only be provided to the guardian ad litem or attorneys for the child in a civil

proceeding, or a prosecutor in a criminal child abuse proceeding. Trial assistance, research, and consultation on the law and legal strategy are available at no cost.

- **Education**

A course on child welfare law will be taught by the project's director beginning in the fall of 1997.

Dual Track For Child Protective Services (Ratification 135)

The South Carolina General Assembly joint resolution allows DSS to:

- establish a pilot program to divert some child abuse and neglect cases to an assessment track rather than the normal investigative process that leads to possible family court action;
- collaborate with the community to develop informal and formal services;
- collect and analyze data regarding excessive corporal punishment and report to the Governor's Office and the House and Senate Judiciary Committees.

Case Evaluation

- DSS must screen all reports of suspected child abuse and neglect to determine whether the report alleges child abuse or neglect as defined in §20-7-490.
- The report is sent to an appropriate DSS employee for investigation or assessment purposes.
- The agency can take custody of the child pursuant to §20-7-610 if appropriate.

- DSS has 24 hours to initiate an investigation or an assessment for the purpose of deciding if intervention is warranted.

Assessment

- An assessment of the risk to the child and the family's need for services to minimize future threats of harm from abuse and neglect must be made within 30 days.

- The case must be closed if DSS determines the child was not abused or neglected.

- The agency must make appropriate referrals to service providers if the case is closed.

- An assessment does not require an indication of child abuse or neglect or placement on the Central Registry of Child Abuse and Neglect as an alleged perpetrator.

Assessment Procedures

- The subject of the report and the child's family must be given a written and oral explanation of the assessment procedure;
- An assessment of the child identified in the report and other children in the home must be conducted;
- The agency, parents and other relevant persons will develop a written services plan. The plan may be for no more than six months except that the duration may be for up to one year if the plan includes treatment that cannot be completed within six months. All plans may be extended for up to one year. The plan must comply with the provisions of §20-7-762 or §20-7-764.
- The agency may refer the family to mediation or a family group

conference to assist in developing the plan.

☐ If reasonable progress on an agreement is being made by the parties in a mediation or family conference, a 30 days extension may be granted for good cause.

☐ A family group conference can include parents, relatives, teachers, ministers, etc.

- The agency can file an intervention complaint pursuant to §20-7-738 if the parents or service providers identified in the plan do not agree with the plan.

- At the end of the initial plan the agency will review the plan, the implementation of the plan and the circumstances in the home with the parents, and:

☐ close the case; or
☐ amend the plan for no longer than 6 additional months; or
☐ refer the case to family court for intervention pursuant to §20-7-738.

The case cannot be kept open for longer than one year without family court approval.

- The agency must assist the child and family in obtaining the services.

Investigation Alternative

- Reports of willful or reckless child maltreatment will be investigated, and those that are indicated will be entered on the Central Registry of Child Abuse and Neglect.

Subsequent Reassignment

- If facts arise during the assessment or the implementation of the plan suggesting willful or reckless abuse or neglect DSS shall immediately initiate an investigation and notify law enforcement.

- During the investigation the agency may reassign the case to the assessment track if it appears the child was not willfully or recklessly mistreated.

- The agency must complete the assessment or investigation of the case within 30 days after the commencement of the investigation or assessment or 45 days after the report of abuse was taken. The director or his or her designee may grant a one time extension of 15 days for good cause shown.

The agency must collaborate with the community to identify and develop local formal or informal services for children and families.

The agency can revise the procedures for the pilot program as necessary by emergency regulations.

This Act took effect upon the Governor's approval 6/10/97

Victim and Witnesses Services (Act 141)

- Adds §16-3-1350 so as to provide for medicolegal exams relating to certain illegal sexual activity.
(Effective October 1, 1997)

- Amends §16-3-1210 relating to persons eligible to receive awards from the Victim's Compensation Fund, so as to delete the provisions that allow a licensed health care or medical facility to receive awards from the fund.
(Effective October 1, 1997)

- Amends Article 15, Chapter 3, Title 16, relating to the Victim's and

Witness's Bill of Rights, so as to revise the provisions of the article.

(Effective October 1, 1997)

- Amends §14-1-206 relating to certain general sessions court assessments.

(Effective July 1, 1997)

- Amends §14-1-207 relating to certain magistrate court assessments.

(Effective July 1, 1997)

- Amends §14-1-208 relating to municipal court assessments.

(Effective July 1, 1997)

- Adds §14-1-211 so as to provide certain surcharges to be imposed upon convictions.

(Effective July 1, 1997)

The following is intended as a summary only and primarily highlights rights afforded to victims/witnesses.

Refer to the actual legislation for exact language, specific provisions, and responsibilities of each agency.

Medicolegal examination

Section 16-3-1350

States that victims of criminal sexual conduct in any degree, criminal sexual conduct with a minor in any degree, or child sexual abuse who have filed an incident report with a law enforcement agency have the right to:

- ☐ a free routine medicolegal exam;

- ☐ treatment for venereal disease and medication for pregnancy prevention if indicated and if desired; and to

- ☐ be immediately transported by law enforcement to the nearest licensed health care facility which performs sexual assault exams.

Victim Benefits

SECTION 2. Amends §16-3-1210 relating to persons eligible to receive awards from the Victim's Compensation Fund, so as to delete the provisions that allow a licensed health care or medical facility to receive awards from the fund.

Victim and Witness Service

SECTION 3.

- Changes the name of the Victim's and Witness's Bill of Rights to Victim and Witness Service.

- Contains enabling legislation to implement the amendment to the state constitution.

- Declares legislative intent to:
 - ☐ ensure that all victims/witnesses are treated with dignity, respect, courtesy, and sensitivity;

- ☐ ensure that the rights and services extended in this article to victims/witnesses are honored and protected by law enforcement, prosecutors, and judges in as vigorous a manner as the criminal defendants;

- ☐ ensure that the State has a responsibility to provide support to a network of services for victims of crime, including victims of domestic violence and criminal sexual assault.

- Defines relevant terms for purposes of this article in §16-3-1510.

- Victims and prosecution witnesses, who wish to exercise their rights and/or receive services under this article, must provide their legal names, current addresses, and telephone numbers to all the appropriate agencies.

- Under this legislation, various agencies have specific (and often new)

responsibilities to victims and prosecution witnesses, including:

☐ providing, free of charge, a copy of the initial incident report of the victim's case and a document which describes the rights and responsibilities of victims as well as services and benefits available;

☐ being notified of their rights to:

-be present and participate in all hearings;

-be represented by counsel;

-pursue civil remedies; and

-submit an oral and/or written impact statement for consideration by the presiding judge at the disposition hearing;

-submit a written victim impact statement at any postadjudication proceeding;

-financial assistance, compensation, and/or fees which they may be entitled.

☐ assisting victims in applying for victim's compensation benefits and other assistance;

☐ assisting victims with credit or employment issues that are the result of an offense;

☐ be informed of the applicable procedures/practices of the criminal and/or juvenile justice system and courtroom protocol. Reasonable and appropriate steps must also be taken to minimize inconvenience throughout court preparation and proceedings;

☐ notification of the arrest/detention of the suspect;

☐ notification of the appropriate bond or other pretrial release hearing or procedure;

☐ being provided with any measures necessary to protect them, including transportation to and from the court and physical protection in the courthouse;

☐ notification of their right to attend bond hearings (or in the

case of juveniles, detention hearings) and make recommendations to the presiding judge;

☐ having the presiding judge impose bond conditions (or in the case of juveniles that are not ruled detained, conditions of release) which are sufficient to protect them from harassment/intimidation by the defendant/juvenile or persons acting on behalf of the defendant/juvenile;

☐ if a victim/witness is threatened, the incident must be referred to the appropriate law enforcement agency for prompt investigation and a reasonable attempt made to prosecute the case;

☐ being notified if/when the defendant is released from jail, prison, or other facility having custody of the defendant;

☐ being notified if the defendant escapes from custody;

☐ being notified if the defendant is transferred to a less secure facility;

☐ being notified of their right to attend preliminary hearings;

☐ being notified of each hearing, trial, or other proceeding;

☐ having personal property taken as evidence returned as expeditiously as possible;

☐ being informed of the status of their case and conferred with regarding the disposition of the case;

☐ employers of victims and witnesses must not retaliate against or suspend or reduce the wages and benefits of a victim/witness who lawfully responds to a subpoena;

☐ not being sequestered from a proceeding adjudicating an offense of which he was a victim;

☐ requiring the family court and circuit courts to make reasonable efforts to provide victims/prosecution witnesses waiting areas separate from those used by the defendant/defense witnesses;

☐ The circuit or family court must treat sensitively witnesses who are very young, elderly, handicapped, or who have special needs by using closed or taped sessions when appropriate. The prosecuting agency or defense attorney must the court when a victim or witness deserves special consideration.

☐ having victim's rights recognized and protected as diligently as those of the defendant;

☐ being provided a form that solicits pertinent information if they wish to make a written victim impact statement;

☐ being offered assistance in preparing, reviewing, and updating the victim impact statement;

☐ The circuit or family court must hear or review any victim impact statement before sentencing and must address the issue of restitution.

☐ The circuit or family court must order reasonable expert witness fees and reimbursement to victims of reasonable out-of-pocket expenses associated with lawfully observing a subpoena.

☐ Regarding post-conviction proceedings:

o a reasonable attempt must be made to notify each victim of post-conviction proceedings affecting the probation, parole, or release of the offender;

o victims have the right to attend and comment at these proceedings;

o the Attorney General must confer with victims regarding appeals or other post-conviction proceedings;

o victims must be kept reasonably informed of the status and progress of any appeal/post-conviction proceeding until its resolution.

● Nothing in this article creates a cause of action on behalf of a person against a public employee, public agency, the State, or an agency

responsible for the enforcement of rights and provisions of services set forth in this article.

- A sentence must not be invalidated because failure to comply with the provisions of this article.
- This article must not be construed to create a cause of action for monetary damages.

Copies of Photographs and Reports to DSS (Act 31)

This act clarifies that copies, rather than originals, of photographs, negatives, radiological, and other medical reports are required to be sent to DSS when a report of suspected child abuse is made, or as soon as possible after the report.

This act took effect when it was approved by the Governor on May 21, 1997.

Assault and Battery on School Personnel (Act 80)

- Adds §16-3-612
 - ☐ defines schools as any public or private school, kindergarten through colleges and universities, vocational, technical or occupational school;
 - ☐ states that a student who commits an assault and battery, other than an aggravated assault, on school grounds or at a school event against anyone affiliated with the school (administrators, all teachers, teachers assistants, custodial, food service staff, volunteers, school bus drivers, crossing guards, etc.) is guilty of *assault and battery against school*

personnel which is a misdemeanor and must be fined not more than one thousand dollars or imprisoned not more than one year or both. [Penalty for high and aggravated assault against school personnel remains the same].

- Amends §20-7-7210(B) to make a child eligible for detention in a secure juvenile facility if the child is charged with assault and battery or assault and battery of a high and aggravated nature against someone affiliated with the school.

- Adds §59-63-370

☐ requires that school administrators be notified if a student is convicted or adjudicated delinquent for assault and battery or assault and battery of a high and aggravated nature against school personnel;

☐ requires that the conviction, adjudication and sentence be included in the student's permanent record;

☐ requires administrators to notify each teacher or instructor in whose class the student is enrolled of the student's conviction or adjudication for assault and battery or assault and battery of a high and aggravated nature against school personnel;

☐ requires the forwarding of the information on the conviction or adjudication and sentencing with the student's permanent school records if the student transfers to another school or school district.

This Act took effect 6/10/97 upon Governor's approval.

Emergency Protective Custody Proceedings (Act 130)

The primary changes made by this relate to terminology. §20-7-610 no longer includes the term "emergency physical custody", but the substance of the provision is changed only as noted in A-D below. The law enforcement officer takes emergency protective custody of the child, and delivers the child to DSS. DSS has 24 hours to conduct a preliminary investigation and determine whether it needs to assume legal custody of the child or whether the child can be returned home or placed with a relative. If DSS assumes legal custody, it must file a removal petition with the court. The law enforcement officer, upon delivering the child to DSS, may direct that the child is not to be returned home or placed with a relative prior to the probable cause hearing, regardless of the outcome of the preliminary investigation.

Procedures for Emergency Protective Custody

A. Only the child with injuries may be taken into EPC in excessive corporal punishment cases; unless there is a history of domestic violence, alcohol or drug abuse or other circumstances indicative of danger to the child's siblings.

B. The agency must conduct a preliminary investigation within 24 hours after a law enforcement officer took emergency protective custody or upon issuance of an *ex parte* order.

C. The law enforcement agency and DSS must agree on procedures to be used if the officer is unavailable to consent to the child being returned home. The arrangement could include:

- the child remains in the agency's custody;
- the conditions under which the child can be returned home;
- other persons within law enforcement who can be consulted;
- DSS can consult with the officer's designee or the officer's agency if an agreement has not been reached regarding action to be taken if the officer is unavailable.

D. 24 hour protective custody period can be extended up to another 24 hours if:

- the child is to be placed with a relative or other adult instead of the agency taking legal custody of the child; and
- the agency requests a criminal records check on the relative, other persons or other adults living in the home; and
- law enforcement needs the extension to complete the criminal background check.

Alternatives to Foster Care Placement

A. If a specified kinship placement has been identified and the relative and parents agree to the placement, the agency can retain physical custody of the child up to 5 additional days to complete placement arrangements such as travel plans.

B. DSS must determine whether to assume legal custody and file a petition if the kinship placement does not occur as planned.

C. The child, if age-appropriate, must be advised of the placement arrangements, including any changes.

A requirement that the agency make reasonable efforts to prevent the child's removal including the family conference and relative placement under §20-7-610(D) remains in effect.

The family court can decide if probable cause exists to retain legal custody at the time of the hearing.

This Act took effect upon the Governor's signature 6/13/97.

Adoption Assessments / Foster Care (Act 22)

Permanency Hearing

The Child Protection Reform Act, which was effective January 1, 1997, required that a permanency planning hearing be held within one year after a child entered foster care. At this hearing, the court must order that the child be returned home or, if return home presents an unreasonable risk to the child, that a TPR complaint be filed. If DSS demonstrated that TPR was clearly not in the child's best interest and other specific criteria were met, the court could select an alternative permanent placement.

Adoption is given greater weight under the new Act. If TPR is the plan, DSS must exercise and document reasonable efforts to promote and expedite adoption, including a thorough adoption assessment and child-specific recruitment. Failure to diligently seek adoptive placement for a child classified as "special needs" is expressly prohibited.

The new law requires that the viability of adoption be assessed before DSS can demonstrate to the court that TPR is not in the child's best interest.

One of the possible alternative placements is that custody or guardianship can be granted to a relative or suitable nonrelative if such guardianship is in the child's best interest. This act now requires that a home study be submitted to the court prior to such placement.

A second alternative is permanent foster care, if a child has special needs or circumstances and a permanent foster caregiver has been identified. Previously, these special needs or circumstances had to be shown to the court by clear and convincing evidence for children under ten. This standard is now extended to all children under age fourteen.

A third alternative has been to extend foster care placement in order to provide independent living services if the child is sixteen and unwilling or unable to adapt to a permanent placement. The new amendment requires exhaustion of reasonable efforts to place the child adoptively before considering this alternative.

Abandonment is added as a ground for the termination of parental rights. Abandonment means *a parent or guardian wilfully deserts a child or wilfully surrenders physical possession of a child without making adequate arrangements for the child's needs or the continuing care of the child.*

Foster Care

The placement plan must specify the frequency of contacts the caseworker will have with the child in foster care, which may not be less than one per month. Contacts must include face-to-face interviews with the child, foster parents, and other adults living in the foster home. The child must be interviewed outside the presence of other residents of the home if there is any suspicion of abuse or neglect.

DSS must establish a 24-hour toll-free telephone line for foster children to report problems that the child believes the caseworker cannot or will not resolve. Foster children, if age-appropriate, must be given a printed card with this telephone number.

DSS must invite foster parents to Foster Care Review Board meetings. Foster parents who are unable to attend must submit a progress report prior to the proceeding.

Any public employee who has actual knowledge of a violation of the above provisions is required to report it to S.C. DSS. Failure to report a violation is a misdemeanor.

DSS is required to provide the General Assembly a report on the status of the foster care system by January 15, 1999. This report must include improvements in the following areas:

- establishment of standards for training of foster parents;
- standards addressing emergency situations affecting the maximum number of children placed in each foster home;
- standards providing for periodic determination of the medical condition of a child in foster care; and
- methods to encourage the receipt of information on the needs of foster children from persons recently emancipated from the foster care system.

The list of persons who may not serve as foster parents was expanded. Children may no longer be placed in foster care with a person who has committed assault and battery of a high and aggravated nature against a minor, criminal domestic violence, or

criminal domestic violence of a high and aggravated nature.

This act took effect upon Governor's approval May 21, 1997.

Child Support Obligations, Enforcement, Family Independence Provisions, Child Support Liens (Act 133)

- Contains amendments concerning rescheduling negotiation conference if person who owes child support does not receive proper notice.

□ Amends §20-7-9515 to allow a person who owes child support to reschedule a negotiation conference within thirty days of notice of financial responsibility;

□ Amends §29-7-9520 to require that notice of a rescheduled negotiation conference must be served on a person who owes child support not less than ten days before the rescheduled conference;

□ Amends §20-7-9530(A) to give a person served with notice of financial support 30 days after service of such notice to request a court hearing before default is entered; and

□ Amends §20-7-9530(D) which requires rescheduling of negotiation conference if a person who owes child support was served less than 30 days prior to negotiation conference;

- Amends §12-6-4379 to give tax credits to employers who employ people who have received Family Independence payments;

- Amends §20-7-941(4) to clarify that licenses which can be

revoked for nonpayment of child support include the privilege to hunt, fish or trap for recreational purposes;

- Amends §43-5-1120(B) to clarify that an applicant for welfare assistance must either be enrolled in a "job club" or they must be referred to evaluation or assessment or other services conducive to employment;

- Amends §43-5-1135 to clarify that all state agencies should target ten percent of all jobs requiring a high school diploma or less to be filled with Family Independence or food stamp recipients;

- Amends §43-5-1185 to require adult recipients of Family Independence Benefits to participate in a family skills training program only if their Family Independence case manager determines they need it;

- Amends §43-5-1190 to clarify that subsequent alcohol-related offenses do not disqualify Family Independence recipients from receiving benefits;

- Amends §43-5-1200 to exempt one licensed vehicle per licensed driver from the asset limit for Family Independence participants who are working or are in training;

- Adds §20-7-1295 which creates a child support lien for unpaid child support of \$1,000 or more and any unpaid child support that may accrue in the future. The lien can be put upon real property, a vehicle, personal property, or financial accounts including a life insurance or endowment contract.

This Act took effect 6/11/97 upon the Governor's approval.

Amendments to the Child Support Enforcement Act

(Act 71)

The act makes several amendments to child support collection under Title IV-D of the Social Security Act. Various South Carolina statutes are amended:

- to include the requirement of listing social security numbers on a variety of licenses and family court orders involving child support (§§20-3-235, 20-7-853, 20-1-220, 20-1-350, 20-7-949, 20-7-957, 44-63-75);
- to require provision of certain identifying information to a judicial or administrative tribunal in child support or paternity actions (§20-7-854);
- to enhance the procedures for establishing paternity including voluntary acknowledgment of paternity under §44-7-77 and see §§20-7-92, 20-7-855, 20-7-958, 20-7-956(A) provides that the person acknowledging paternity must be given the opportunity to seek legal advice before signing the acknowledgment;
- to conform the Uniform Interstate Family Support Act to the National Conference of Commissioners on Uniform State Laws under §§ 20-7-1124, 20-7-1126, 20-7-1127, 20-7-1128, 20-7-1129, 20-7-1010 20-7-1040, 20-7-1100, 20-7-1125 and 20-7-1152;
- to enhance the income withholding provisions (§20-7-1315);
- to give DSS the authority and ability to change the payee for

Title IV-D child support cases (§§ 20-7-9570, 20-7-9505 and 20-7-9510);

- to give DSS the authority to issue and enforce administrative subpoenas [§§20-7-9575 and 20-7-420(43)];
- to provide that fraudulent conveyances for purposes of avoiding the child support obligation are deemed void (§27-23-10);
- to eliminate the payment of the "child support disregard check";
- to require employers, agencies, financial institutions, and utility companies to provide information necessary for the establishment or enforcement of child support obligations (§§44-63-80, 44-63-84 44-63-86, 43-5-595, 43-5-596, 43-5-597);
- to establish a new hire directory and mandatory new hire reporting program (§43-5-598); and
- to establish a state registry of child support cases (§43-5-610).

This Act took effect upon the Governor's signature 6/10/97.

Child Endangerment/ Failure to Stop for a Blue Light (Act 14)

This act amends §20-5-2947, by adding failure to stop for a blue light (§56-5-750) to the offenses under which an adult could be convicted of child endangerment if a passenger under 16 is in the vehicle. The offense of driving under the influence continues to be covered under this section. A person could only be charged with one violation of this

section per failure to stop, even if there are more than one passengers under the age of 16. A person could be fined up to one-half of the maximum fine for the triggering violation; or imprisoned for no more than one-half of the maximum term allowed for the first violation; or both if the person is fined and imprisoned. Penalties for child endangerment cannot be suspended or revoked, and probation is not an option. The driver's license of a person convicted under this section would also be suspended for sixty days.

The court which has jurisdiction over the triggering offense would also have jurisdiction over the child endangerment charge. A first offense charge under this section cannot be used as the only evidence for taking a child into emergency protective custody.

This act became effective upon the Governor's approval, April 23, 1997.

Law Enforcement Officer Immunity(Act 101)

Amends §20-7-545 to provide that law enforcement officers and DSS employees who perform child protective functions are immune from civil and criminal liability if acting in good faith and not reckless, wilful, wanton, or grossly negligent. (Good faith is rebuttably presumed.) This bill also requires DSS to establish statewide guidelines for intervention in cases of excessive corporal punishment.

Effective upon approval by the Governor 6/13/1997.

Early Periodic Screening Diagnosis and Treatment (Act 78)

Section 44-1-260 has been added to allow for the person doing the medical screen to refer a child for an assistive technology evaluation. Assistive technology means any equipment or system which improves the child's capacity, including but not limited to wheelchairs, seating and positioning aids, computer aids, home and workplace modification, aid for vision or hearing impairments, etc.

This act took effect 6/11/97.

Youth Industries Program (Act 135)

- Adds §20-7-6890 et seq. which permits Department of Juvenile Justice to establish a Youth Industries Program (YIP).

- Allows the YIP to (1) provide services to private industries; (2) manufacture or provide services needed in the construction, operations, maintenance of any State agency; (3) provide juveniles with paid work opportunities consistent with the Department's mission of rehabilitation and treatment;

- requires that the products or services must be sold as near to usual market price for articles, products or services as is practicable;

- provides that the money from YIP can only be used to buy supplies for YIP or to pay wages of juvenile and personnel necessary to program and defray expenses of program;

- requires that the following be deducted from the juvenile's salary: state, federal and

local taxes, child support, victim compensation;

- requires that youth providing services to private industry be paid wages commensurate with the prevailing wage; and

- requires that juvenile participation in YIP must not result in the displacement of employed workers in the State and must not impair existing contracts.

- Amends § 20-7-7815 to clarify that no juvenile who is seriously handicapped by mental illness or retardation can be committed to an institution under the Department of Juvenile Justice's control. Instead DJJ can, through voluntary admission or by instituting necessary legal action, transfer the juvenile to another state agency which is best qualified to care for the juvenile. When the agency to whom the juvenile is transferred determines it is appropriate to release the juvenile, that agency must submit request for release to the juvenile parole board. If the board does not grant release, the juvenile must be placed in an appropriate environment.

- Amends §20-7-8305(A) to allow parole board to conduct youth parole hearings by means of two-way, closed circuit television system.

This Act took effect 6/10/97 upon the Governor's approval.

Violation of a Custody Order (Act 95)

This bill amends §16-17-495 regarding violation of a custody order if the child is under the age of 16. The statute applies to the following circumstances:

- South Carolina custody orders and orders from other states, and

- presumption of custody to the mother when the child is born out of wedlock.

It is unlawful for a person to take, transport or cause to be taken or transported the child from the legal custodian for the purpose of concealing the child or circumventing the order or statute.

If a custody action was filed and served it is unlawful for a person to **intentionally** circumvent or avoid the custody proceeding. It is inferred that a person who keeps the child outside the state for more than 3 days without notice to the custodial party intended to violate this statute.

Sanctions

- Violation of this statute is a felony that may include a fine at the discretion of the court and imprisonment up to 5 years or both.

- If physical force or the threat of physical force is used to take or transport the child in violation of the statute then the person violating the statute is guilty of a felony and subject to a fine and imprisonment for no more than 10 years or both.

- A person violating this statute may be required to pay necessary travel, attorney fees or other related fees incurred by the custodian party, witness or law enforcement.

- A person who violates the statute, but returns the child within 3 days, is guilty of a misdemeanor and subject to a fine and imprisonment of not more than 3 years or both.

House Bill (3861) was added to this bill

- This bill amends §20-1-100. This bill prohibits and voids any

marriage of a male under the age of 16 or a female under the age of 14. A marriage includes common law marriage. Marriages entered into after the effective date of this act are void.

- The statute on criminal sexual conduct (§16-3-658) where the victim is a legal spouse does not apply to purported marriages by males under the age of 16 or females under the age of 14.
- The statute on spousal sexual battery §16-3-615 does not apply to purported marriages by males under age 16 or females under the age of 14.

The Act took effect upon the Governor's approval, 6/11/97

Confidentiality of Records of Continuum of Care (Act 60)

A new section (§20-7-5655) provides for the confidentiality of records, reports, applications, and files kept on clients or potential clients by the Continuum of Care for Emotionally Disturbed Children. Disclosure can only be made to develop services; upon consent of the client or guardian; by court order; for authorized research; or if necessary to any entity or state agency providing services to the client. The new section does not preclude disclosure of information to family members upon proper inquiry or require release of records where prohibited by federal law. A violation of the section is a misdemeanor.

This act also repeals the requirement of an advisory council to support the Continuum of Care.

This act became effective upon the Governor's approval June 10, 1997.

Foreign Adoptions (Act 69)

When adoptions are finalized in a foreign country, the court shall review the documentation. If the documentation is satisfactory, the court shall issue an order recognizing the foreign adoption and transmit the order and certificate of adoption to the State Registrar of Vital Statistics. Court Administration, in consultation with the Department of Health and Environmental Control, must develop petition forms and guidelines for obtaining the domestication of foreign adoptions.

This act took effect upon the Governor's approval, June 10, 1997.

Central Registry of Child Abuse and Neglect (Act 132)

The former Central Registry of Child Abuse and Neglect served as a central data system and a registry of persons who could endanger children if placed in employment or other positions involving substantial contact with children. The Central Registry created by the statute is a perpetrator registry separate from the agency data system. Perpetrators' names can be entered on the Registry only by order of a court.

Section 20-7-650(H) through (R) was amended. Reports of child abuse and neglect are to be immediately entered in DSS' centralized data system, but not in the Central Registry.

Criminal Convictions

This bill adds §17-25-135 to include persons in the Central Registry of Child Abuse and Neglect if they are

convicted of, or plead guilty or nolo contendere to:

- an Offense against the Person,
- an Offense against Morality or Decency,
- criminal domestic violence, criminal domestic violence of a high and aggravated nature,
- common law offense of assault and battery of a high and aggravated nature and the act on which the conviction or plea is based involved the sexual or physical abuse of a child, whether or not inflicted by a person responsible for the child's welfare.

The person's name, date of birth, address and the nature of the offense are included as a part of the registry.

The additional information under §17-25-135 includes the definition of physical and sexual abuse of a child.

Child Protective Services Cases

- The Family Court Judge will order the names of perpetrators of child abuse and neglect to be placed in the registry based upon the preponderance of the evidence in a removal (§20-7-736), intervention hearing (§20-7-738) or at the probable cause hearing under §20-7-610 if:

☐ The court orders that the child be retained, remain retained or finds the child to be abused or neglected; and

☐ the person has physically or sexually abused or wilfully or recklessly neglected the child; or

☐ the person abused or neglected the child in some manner and the nature and circumstances of the abuse indicate that the person presents

a significant risk of committing physical or sexual abuse or reckless neglect. This standard, rather than the physical abuse standard, is used for cases of excessive corporal punishment.

Procedures under the modified registry system

- At any time following receipt of a report, DSS can file a petition and a summary of facts to have a person entered on the Central Registry of Child Abuse and Neglect if the nature of the abuse or neglect indicated that the perpetrator would present a significant risk of committing abuse or neglect if placed in a position involving substantial contact with children (i.e., day care providers, teachers, etc.).
- The alleged perpetrator will have 5 days to request a hearing; otherwise the court can rule on the petition and summary.
- The hearing must be held no later than 5 working days after the hearing request.
- Information regarding the alleged perpetrator must be removed immediately upon a determination of an unfounded report.

Confidentiality of registry information

Generally, only the Central Registry of Child Abuse and Neglect can be used to screen potential employees or volunteers except as provided in §20-7-690.

Treatment of existing records

Perpetrators currently listed in the Central Registry of Child Abuse and Neglect will be transferred to the modified registry if:

□ there was an affirmative determination that the perpetrator physically or sexually abused the child or wilfully or recklessly neglected the child (neglect will be treated as willful or reckless if criminal charges were filed).

□ for cases indicated before January 1, 1993 the department will review the files when a request for screening is made by a potential employer and redesignate the person's status under the modified system.

Technical Amendments

Obtaining information from law enforcement

§20-7-616 or the statute involving release of information from law enforcement has been amended. DSS can request from law enforcement information about the criminal history of the subject of the report or other adults living in the home. The former statute allowed the agency to receive a summary of the criminal records. The new amendment includes information regarding conviction data, nonconviction data, arrests and incident reports. This information is available to the agency without a fee.

Motion for Permanency Hearing

§20-7-766(A) was amended so that permanency hearings are initiated by motion rather than pleadings.

Abuse in Foster Homes

Indicated reports of abuse or neglect in foster care homes will be based upon the preponderance of the evidence. An appeal of the agency's decision can be made pursuant to §20-7-655 (includes an administrative appeals and family court review process).

§20-7-670 is amended to provide notice by certified mail to an individual of the impact an indicated report of abuse and neglect may have on future employment and licensing. The notice will include the right to request an appeal of the agency's decision.

This Act takes effect 1/1/98.

The full text of acts can be accessed through the Internet by typing: www.lpittr.state.sc.us. Printed copies of the acts can be obtained by calling Legislative Information at (803) 734-2060 or 1-800-922-1539. Attorneys may also contact the S.C. Bar at (803) 799-6653 for copies of bills; ask for extension 141 for senate bills and extension 145 for house bills.



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